

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

DARREN R. LINDLEY, )  
Plaintiff, )  
v. ) No. 1:19-cv-51-RLW  
BECKY D. LIZENBEE, et al., )  
Defendants. )

## **MEMORANDUM AND ORDER**

This matter is before the Court on the motion of plaintiff Darren R. Lindley, an inmate at Southeast Correctional Center (“SECC”), for leave to commence this civil action without prepayment of the required filing fee. Having reviewed the motion and the financial information submitted in support, the Court has determined to grant the motion, and assess an initial partial filing fee of \$3.20. *See* 28 U.S.C. § 1915(b)(1). Additionally, for the reasons discussed below, the Court will direct plaintiff to file an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to

the Clerk of Court each time the amount in the prisoner's account exceeds \$10.00, until the filing fee is fully paid. *Id.*

In support of the instant motion, plaintiff submitted an inmate account statement showing an average monthly deposit of \$16.00, and an average monthly balance of \$5.18. The Court will therefore assess an initial partial filing fee of \$3.20, which is twenty percent of plaintiff's average monthly deposit.

#### **Legal Standard on Initial Review**

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief may be granted. An action is frivolous if it "lacks an arguable basis in either law or fact." *Neitzke v. Williams*, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief may be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw upon judicial experience and common sense. *Id.* at 679. The court must assume the veracity of well-pleaded facts, but need not accept as true "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Id.* at 678 (citing *Twombly*, 550 U.S. at 555).

This Court must liberally construe complaints filed by laypeople. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). This means that "if the essence of an allegation is discernible," the court should "construe the complaint in a way that permits the layperson's claim to be considered within the proper legal framework." *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015) (quoting *Stone*

*v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004)). However, even pro se complaints must allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980). Federal courts are not required to assume facts that are not alleged, *Stone*, 364 F.3d at 914-15, nor are they required to interpret procedural rules so as to excuse mistakes by those who proceed without counsel. See *McNeil v. United States*, 508 U.S. 106, 113 (1993).

### **The Complaint**

Plaintiff brings this action pursuant to 42 U.S.C. § 1983 against Nurse Practitioners Nina Hill and Rebekah Graham, Nurse Becky D. Lizenbee, and Dr. Philip Tippen. He states he sues the defendants in their individual and official capacities. He claims that the defendants were deliberately indifferent to his serious medical condition while he was incarcerated at Southeast Correctional Center.

Plaintiff's allegations are either incoherent or wholly conclusory. Regarding Hill and Lizenbee, he first alleges that, on March 14, 2017, Hill "first removed my cane and replaced with walker stating all canes removed by order of Major, which was not true," and that "[t]his all lead to numbness from left knee down to left foot which lead to cause leg to go out and I took a fall and broke my left hip." Next, plaintiff alleges that Lizenbee took away his walker on April 4, 2017, "to which lead to hip being broke. Due to both Nina Hill and Becky D. Lizenbee removing doctor ordered medical device with deliberate indifference. They both deprived me of any medical devices which has caused me to break my hip." Regarding Dr. Tippen, plaintiff alleges "at no time did Dr. Tippen intervene over the numbness in my left leg which he has shown deliberate indifference to my medical condition to which caused my fall and to break my hip." Finally, regarding Graham, plaintiff alleges he saw her "off and on" for complaints and medication renewal, and she took "one dose of my medication away for no reason other than to save money!"

Which shows deliberate indifference towards my pain and suffering!” Attached to plaintiff’s complaint are copies of an Informal Resolution Request, grievance, and grievance appeal he filed to complain about the removal of his cane and walker, along with copies of the responses he received. These documents indicate that plaintiff received regular medical attention and assessment of his need for assistive devices.

As relief, plaintiff seeks compensatory damages from each defendant of \$360,000 per year from March 14, 2017 to the present date, and punitive damages of \$25,000. He also states he wants Lizenbee terminated.

### **Discussion**

Plaintiff’s official capacity claims are subject to dismissal. *See Monell v. Dept. of Social Services of City of New York*, 436 U.S. 658, 690-91 (1978). Plaintiff’s individual capacity claims are subject to dismissal as well, due to the incoherent and conclusory nature of his allegations. Finally, this Court cannot order Lizenbee’s termination. Because plaintiff is proceeding *pro se*, the Court will allow him to amend his complaint. Plaintiff is warned that the amended complaint will replace the original complaint. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Plaintiff must submit the amended complaint on a court-provided form, and he must comply with the Federal Rules of Civil Procedure, including Rules 8 and 10. Rule 8 requires plaintiff to set forth a short and plain statement of the claim showing entitlement to relief, and it also requires that each averment be simple, concise and direct. Rule 10 requires plaintiff to state his claims in separately numbered paragraphs, each limited as far as practicable to a single set of circumstances.

In the “Caption” section of the amended complaint, plaintiff must state the first and last name, to the extent he knows it, of each defendant he wants to sue. Plaintiff should also indicate

whether he intends to sue each defendant in his or her individual capacity, official capacity, or both.<sup>1</sup> Plaintiff should avoid naming anyone as a defendant unless that person is directly related to his claim.

In the “Statement of Claim” section, plaintiff should begin by writing the first defendant’s name. In separate, numbered paragraphs under that name, plaintiff should set forth the specific factual allegations supporting his claim or claims against that defendant. Plaintiff should only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. *See Fed. R. Civ. P. 20(a)(2).* Alternatively, plaintiff may choose a single defendant, and set forth as many claims as he has against that defendant. *See Fed. R. Civ. P. 18(a).*

If plaintiff is suing more than one defendant, he should proceed in the same manner with each one, separately writing each individual defendant’s name and, under that name, in numbered paragraphs, the factual allegations supporting his claim or claims against that defendant. Plaintiff’s failure to make specific factual allegations against any defendant will result in that defendant’s dismissal.

Accordingly,

**IT IS HEREBY ORDERED** that plaintiff’s motion to proceed *in forma pauperis* (Docket No. 2) is **GRANTED**.

**IT IS FURTHER ORDERED** that, within thirty (30) days of the date of this Memorandum and Order, plaintiff must pay an initial filing fee of \$3.20. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison registration number; (3) this case number; and (4) the statement that the remittance is for an original proceeding.

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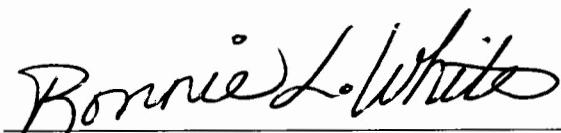
<sup>1</sup> The failure to sue a defendant in his or her individual capacity may result in the dismissal of that defendant.

**IT IS FURTHER ORDERED** that, within thirty (30) days of the date of this Memorandum and Order, plaintiff shall file an amended complaint in accordance with the instructions set forth herein.

**IT IS FURTHER ORDERED** that the Clerk of Court shall mail to plaintiff a blank Prisoner Civil Rights Complaint form. Plaintiff may request additional forms as needed.

**If plaintiff fails to timely comply with this Memorandum and Order, the Court will dismiss this action without prejudice and without further notice.**

Dated this 5<sup>th</sup> day of June, 2019.



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RONNIE L. WHITE  
UNITED STATES DISTRICT JUDGE